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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case Number 7239

13 **SIGFREDO ENRRIQUE MARTINEZ-CABRERA**
14 **26576 Sunvale Ct**
Hayward, CA 94544.

DEFAULT DECISION AND
ORDER

15 **Pharmacy Technician License Number TCH 157220**

[Gov. Code, §11520]

16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about February 21, 2022, Complainant Anne Sodergren, in her official capacity
20 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs,
21 filed Accusation Number 7239 against Sigfredo Enrrique Martinez-Cabrera (Respondent) before
22 the Board. (Accusation attached as Exhibit A.)

23 2. On or about January 23, 2017, the Board issued Pharmacy Technician License
24 Number TCH 157220 to Respondent. The Pharmacy Technician License was in full force and
25 effect at all times relevant to the charges brought in Accusation Number 7239, and will expire on
26 November 30, 2022, unless renewed.

27 3. On or about March 16, 2022, Respondent was served by Certified and First Class
28 Mail copies of Accusation Number 7239, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is: 26576 Sunvale Ct., Hayward, California 94544.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505(c) and/or Business and Professions Code section 124.

7 5. Government Code section 11506(c) states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the respondent
9 files a notice of defense . . . and the notice shall be deemed a specific denial of all
10 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
11 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
12 discretion may nevertheless grant a hearing.

13 6. The Board takes official notice of its records and the fact that Respondent failed to
14 file a Notice of Defense within 15 days after service upon him of Accusation Number 7239, and
15 therefore waived his right to a hearing on the merits of the Accusation.

16 7. California Government Code section 11520(a) states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense . . . or to appear at
18 the hearing, the agency may take action based upon the respondent's express
19 admissions or upon other evidence and affidavits may be used as evidence without
20 any notice to respondent

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
24 finds that the charges and allegations in Accusation Number 7239, are separately and severally,
25 found to be true and correct by clear and convincing evidence.

26 9. The Board finds that the actual costs for Investigation and Enforcement are \$1,473.75
27 as of August 11, 2022.

28 **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Sigfredo Enrique Martinez-
Cabrera has subjected his Pharmacy Technician License Number TCH 157220 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

- a. Possession of a controlled substance without a prescription under Business and Professions Code sections 4301 (j), 4301 (o), 4060 and/or Health and Safety Code section 11350;
- b. Self-administered without a valid prescription of a dangerous drug and/or a controlled substance under Business and Professions Code sections 4301 (j), 4301 (o), and/or Health and Safety Code section 11170;
- c. Dangerous/injurious use of a controlled substance under Code sections 4301 (h), and/or Health and Safety Code section 11170;
- d. Physical illness or injury affecting competency under Business and Professions Code section 822.

ORDER

IT IS SO ORDERED that Pharmacy Technician License Number TCH 157220 issued to Respondent Sigfredo Enrrique Martinez-Cabrera is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 5, 2022 at 5:00 p.m.

It is so ORDERED on September 6, 2022.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



Seung W. Oh, Pharm.D., Board President

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DOJ Matter ID:SF2022400141

Attachment: Exhibit A (Accusation Number 7239)

Exhibit A

Accusation Number 7239

(SIGFREDO ENRRIQUE MARTINEZ-CABRERA)

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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 7239

13 **SIGFREDO ENRIQUE MARTINEZ-CABRERA**
14 **26576 Sunvale Ct**
Hayward, CA 94544.

ACCUSATION

15 **Pharmacy Technician License No. TCH 157220**

16 Respondent.

17
18 **PARTIES**

19 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

21 2. On or about January 23, 2017, the Board issued Pharmacy Technician License
22 Number TCH 157220 to Sigfredo Enrique Martinez-Cabrera (Respondent). The Pharmacy
23 Technician License was in full force and effect at all times relevant to the charges brought herein
24 and will expire on November 30, 2022, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Code section 4011 provides that the Board shall administer and enforce both the
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act
3 [Health & Safety Code, § 11000 et seq.].

4 5. Code section 4300 (a) provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11 **STATUTORY AND REGULATORY PROVISIONS**

12 7. Code section 822 states:

13 If a licensing agency determines that its licentiate's ability to practice his or her
14 profession safely is impaired because the licentiate is mentally ill, or physically ill
15 affecting competency, the licensing agency may take action by any one of the
16 following methods:

16 (a) Revoking the licentiate's certificate or license.

17 (b) Suspending the licentiate's right to practice.

18 (c) Placing the licentiate on probation.

19 (d) Taking such other action in relation to the licentiate as the licensing agency
20 in its discretion deems proper.

21 The licensing agency shall not reinstate a revoked or suspended certificate or
22 license until it has received competent evidence of the absence or control of the
23 condition which caused its action and until it is satisfied that with due regard for the
24 public health and safety the person's right to practice his or her profession may be
25 safely reinstated.

26 8. Code section 4301 states, in pertinent part:

27 The board shall take action against any holder of a license who is guilty of
28 unprofessional conduct or whose license has been issued by mistake. Unprofessional
conduct shall include, but is not limited to, any of the following:

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1 (h) The administering to oneself, of any controlled substance, or the use of any
2 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
3 dangerous or injurious to oneself, to a person holding a license under this chapter, or
4 to any other person or to the public, or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

5 ...

6 (j) The violation of any of the statutes of this state, of any other state, or of the
United States regulating controlled substances and dangerous drugs.

7 ...

8 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
9 abetting the violation of or conspiring to violate any provision or term of this chapter
10 or of the applicable federal and state laws and regulations governing pharmacy,
including regulations established by the board or by any other state or federal
regulatory agency.

11 ...

12 9. Code section 4060 provides, in pertinent part, that no person shall possess any
13 controlled substance, except that furnished upon a valid prescription/drug order.

14 10. Health and Safety Code section 11170 provides that no person shall prescribe,
15 administer, or furnish a controlled substance for himself or herself.

16 11. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
17 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
18 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

19 12. California Code of Regulations, title 16, section 1770, states:

20 For the purpose of denial, suspension, or revocation of a personal or facility
21 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
22 Professions Code, a crime or act shall be considered substantially related to the
23 qualifications, functions or duties of a licensee or registrant if to a substantial degree
it evidences present or potential unfitness of a licensee or registrant to perform the
functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

24 **COST RECOVERY**

25 13. Code section 125.3 provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licensee found to have committed a violation of the licensing
27 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

2 14. Code section 4021 states:

3 “Controlled substance” means any substance listed in Chapter 2 (commencing
4 with Section 11053) of Division 10 of the Health and Safety Code.

5 15. Code section 4022 states, in pertinent part:

6 “Dangerous drug” or “dangerous device” means any drug or device unsafe for
self use, except veterinary drugs that are labeled as such, and includes the following:

7 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing
8 without prescription,” “Rx only,” or words of similar import.

9 ...

10 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

11 16. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
12 Code section 11055(b)(1)(M), and a dangerous drug pursuant to Code section 4022. It is a semi-
13 synthetic opioid drug prescribed for pain and has a high potential for abuse.

14 **FACTUAL BACKGROUND**

15 17. On or about December 9, 2019, Respondent smoked or otherwise self-administered
16 Oxycodone that he purchased illegally on the street and was under the influence of both
17 Oxycodone and marijuana while parked in his car at a public park in Castro Valley, California.

18 18. In March 2021, Respondent explained to the Board that he had sought street drugs for
19 relief from chronic pain resulting from an injury he suffered while working as a ramp agent at San
20 Francisco International Airport in February 2018. Respondent reported that his pain “never
21 subsided,” and that he has been “deal[ing] with it every second since the accident.”

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Possession of a Controlled Substance)**

24 19. Respondent is subject to discipline under Code sections 4301 (j), 4301 (o), 4060
25 and/or Health and Safety Code section 11350, for possession of a controlled substance without a
26 prescription, as described in paragraph 17, above, and herein incorporated.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Self-Administration of a Dangerous Drug/Controlled Substance)**

3 20. Respondent is subject to discipline under Code sections 4301 (j), 4301 (o), and/or
4 Health and Safety Code section 11170, in that Respondent administered to himself without a valid
5 prescription a dangerous drug and/or a controlled substance, as described in paragraph 17, above,
6 and herein incorporated.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Dangerous/Injurious/Unsafe Use)**

9 21. Respondent is subject to discipline under Code sections 4301 (h), and/or Health and
10 Safety Code section 11170, in that Respondent used a controlled substance and/or dangerous drug
11 in a manner dangerous or injurious to himself, others, or the public, and/or to the extent that his
12 use impaired his ability practice safely, as described in paragraph 17, above, and herein
13 incorporated.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Physical Illness Affecting Competency)**

16 22. Respondent is subject to Board action under Code section 822 because his ability to
17 safely practice as a pharmacy technician is impaired due to physical illness or injury affecting his
18 competency, as described in paragraph 18, above, and herein incorporated.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Pharmacy issue a decision:

22 1. Revoking or suspending Pharmacy Technician License Number TCH 157220, issued
23 to Sigfredo Enrique Martinez-Cabrera;

24 2. Ordering Sigfredo Enrique Martinez-Cabrera to pay the Board of Pharmacy the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: 2/21/2022

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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